IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 453 of 2007(D)

PETITIONER:

GEORGE M.X., (NO.14345005 A.EX.GNR)
S/O.XAVIER, MANKUZHIYL HOUSE,
MEPPADI P.O., WAYANAD.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS:

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1. THE COMMANDING OFFICER,
AIR DEFENCE WING, (ARTILLERY RECORDS)
ARTILLERY CENTER, NASIK ROAD CAMP.

2. DIRECTOR GENERAL,
AIR DEFENCE OF ARTILLERY (ADA PERS)
GENERAL STAFF BRANCH, ARMY HEAD QUARTERS,
DHQ, P.O., NEW DELHI-110 011.

3. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF HOME AFFAIRS, NEW DELHI.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 453 of 2007

Dated this the 4th day of January, 2007

JUDGMENT

The petitioner, who had just completed 5 years one month and 11 days as a soldier, abandoned his job and reported for duty back only after a considerable period of time. Army officers treated his absence as desertion and he was called upon to face court martial proceedings. Ext.P2 charge sheet was served on him in March 1985 and after following the procedure prescribed, he was found guilty of desertion and appropriate sentence was also passed. He was given copies of the proceedings including copies of Exts.P1 to P4. The entire proceedings were over in February 1985. Naturally, he lost his job and subjected himself to the penal proceedings followed in military service. Long after that on 15.3.2004, he applied for copies of the proceedings presumably stating that he was not in possession of those documents. The respondents obliged and sent to him Ext.P5 substitute discharge certificate dated 12.5.2004 informing that it is a valuable document and that all ex-servicemen be advised to preserve the same with

utmost care. Making use of those documents, the petitioner filed Ext.P6 representation to the Commandant Officer respondent No.1 requesting to review the summary court martial proceedings and to reinstate him in service or atleast to treat it as discharge from service instead of dismissal or desertion. Thereafter the petitioner appears to have filed a memorandum of appeal before His Excellency the President of India on 3.2.2005. In reply to Ext.P7, the Army Officers informed the petitioner that on checking the service documents of the petitioner, it was noticed that he was tried by summary court martial proceedings and was dismissed from service with effect from 6.3.1985 under Army Act Section 38(1), and that, he was aware of the fact that a dismissed service personnel would forfeit all his service benefits. Therefore, he will not be eligible for the status of ex-serviceman.

2. The learned counsel for the petitioner submits that the petitioner did not desert his job, and that, at the worst, it amounts only to unauthorise absence from duty. He points out that the Hon'ble Supreme Court has drawn a distinction between desertion and unauthorised absence that the said ruling applies to the facts of this case. It is contended that the respondents were not justified in treating the absence from duty as desertion and passing consequential order of dismissal from service.

3. Though the above submission, as a proposition of law, appears to be attractive, I am of the opinion that this writ petition is liable to be dismissed for inordinate and unexplained delay which amounts to laches. As the petitioner was aware of the fact that he was dismissed from service and was sentenced to imprisonment, upon treating his case as one of desertion after due summary court martial proceedings, he should have filed appeal before the competent authority. He not only failed to file any appeal but also to approach any Court of law. Two decades have passed and he had been sleeping over. It is contended that he could not attend duty as he had to run away with his fiancee. Unfortunately, infatuation prevailed over the realities of life. If the authorities of the Defence Forces did not accept the above explanation of the petitioner as valid ground, this Court cannot find fault with them. The petitioner ought not to have forgotten his duty to the nation. Anyway, that is not a matter for this Court to consider, since due trial was conducted by the Army Officers who had found him guilty. If the petitioner had filed an appeal within the time limit, the appellate authority would have gone into all those aspects and decision would have been rendered on the merits. Without disturbing the findings on facts entered against the petitioner as early as in 1985, no interference with the order of dismissal is possible.

4. Counsel submits that the respondents could have allowed the petitioner's request to give him the status of an ex-serviceman so that he can avail the benefits granted to such category of service personnel. As already stated, I am not inclined to test the correctness of the impugned orders which were passed as early as in the year 1985, especially when there is no explanation from the petitioner for his silence for a period of about 20 years. The writ petition fails. Dismissed.

K.K.DENESAN, JUDGE

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